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No. 02-809

In the Supreme Court of the United States

STATE OF MARYLAND, PETITIONER

v.

JOSEPH JERMAINE PRINGLE

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether there is probable cause to arrest the occupants of a car when drugs packaged for distribution and a roll of cash are found in the passenger compartment and no occupant acknowledges ownership of the drugs.

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INTEREST OF THE UNITED STATES

This case presents the question whether there is probable cause to arrest the occupants of a car when drugs packaged for distribution and a roll of cash are discovered in the passenger compartment and no occupant acknowledges ownership of the drugs. The resolution of that issue has substantial implications for the enforcement of the federal narcotics laws. The United States therefore has a significant interest in the Court's disposition of this case.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment of the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,

and no Warrants shall issue, but upon probable cause * * * ."

STATEMENT

1. On August 7, 1999, at 3:16 a.m., Officer Jeffrey Snyder of the Baltimore County Police Department stopped a car after observing that it was speeding and the driver was not wearing a seat belt. The car contained three occupants: the car's owner Donte Partlow, who was driving; respondent Joseph Pringle, who was in the front passenger seat; and Otis Smith, who was in the rear seat. Officer Snyder asked Partlow for his license and registration. When Partlow opened the glove compartment to retrieve those documents, Officer Snyder noticed a substantial amount of cash rolled into a bundle. After a computer check of the documents revealed no outstanding violations, Officer Snyder directed Partlow to exit the vehicle and issued him an oral warning. Officer Snyder then asked Partlow whether he had any drugs or weapons in the car. Partlow replied that he did not. Pet. App. 2a-3a.

Officer Snyder next sought and received permission from Partlow to search the vehicle. He began the search after telling the remaining two passengers, respondent and Smith, to exit the vehicle and wait outside the car with Partlow. While examining the area of the front seat, Officer Snyder retrieved the roll of money, totaling $763, from the glove compartment. Later, upon lowering the armrest in the rear seat, Officer Snyder discovered five baggies of crack cocaine that had been lodged between the upright armrest and the seat. Pet. App. 3a-4a & n.2.

Officer Snyder separately questioned the three occupants about the cocaine and money. He advised each of them that they would all be arrested if no one acknowledged ownership of the drugs. None of the occupants gave Officer Snyder any information about the drugs or money. All three then were arrested and transported to the police station. Respondent Pringle, after waiving his *Miranda* rights at the station, confessed that the drugs and money belonged to him. He explained that the three men were going to a party and that he intended to sell the cocaine or exchange it for sex. He also acknowledged that he had placed the drugs behind the rear seat armrest, and stated that neither Partlow nor Smith had known about the drugs. Partlow and Smith were then released, and respondent was charged with possession of cocaine and possession of cocaine with intent to distribute it. Pet. App. 4a; 3/23/2000 Tr. 22-24.

2. a. Respondent moved before trial to suppress his confession, arguing, *inter alia*, that his arrest was not supported by probable cause and that his confession was the tainted fruit of the unlawful arrest. Pet. App. 4a-5a. Following a hearing, the trial court denied respondent's motion. The court explained that the cocaine was within respondent's "reach in the way he was seated," and that the drugs "were not secreted" but "were just basically placed back there and hidden by the armrest," apparently to "hide them * * * from the police." *Id.* at 58a. The court also emphasized "the fact that there was money in front." *Id.* at 59a. The court ruled that, because there was "money in front" and "drugs in the back, both in arm's reach" of respondent, "the officer had probable cause to make the arrest as he did." *Ibid.*

b. At trial, a police detective who qualified as an expert in controlled substances testified that the 0.7 grams of cocaine found in the car were intended for distribution. Pet. App. 53a-54a. He reached that conclu-

sion on the basis that the five baggies had been "packaged individually, which is the way they are usually packaged for resale." *Id.* at 54a. The jury found respondent guilty of possession of cocaine and possession of cocaine with intent to distribute it. *Id.* at 50a.

c. The Court of Special Appeals of Maryland affirmed. Pet. App. 50a-77a. The court concluded that the "circumstances were sufficient to constitute probable cause to make an arrest" because "there were five baggies behind an armrest in the back seat and a substantial amount of cash in the glove compartment located in front of [respondent]." *Id.* at 61a.

3. The Maryland Court of Appeals, by a 4 to 3 vote, reversed respondent's convictions. Pet. App. 1a-49a.

a. The majority reasoned that, "[i]n a specific case, we apply the elements of the alleged offense to the facts and circumstances of that case to determine whether the police officer had probable cause to make a warrantless arrest of a particular individual for that specific offense." Pet. App. 21a. The elements of the drug possession charges brought against respondent, the majority explained, required establishing his "'knowledge' of the [cocaine] and 'dominion or control' over the substance." *Ibid.*

The majority ruled that, "[w]ithout additional facts available to the officer that would tend to establish [respondent's] knowledge and dominion or control over the drugs, the mere finding of cocaine in the back armrest when [respondent] was a front seat passenger in a car being driven by its owner is insufficient to establish probable cause for an arrest for possession." Pet. App. 21a. A contrary conclusion, in the majority's view, would mean that the discovery of drugs in "a bus or other kind of vehicle, or even a place, *i.e.*, movie theater," would allow the arrest of "everyone in such a

vehicle or place * * * until some person confessed to being in possession of the contraband." *Id.* at 21a-22a n.12. The majority attached no significance to the roll of cash found in the glove compartment, reasoning that "[m]oney, without more, is innocuous," *id.* at 22a, and observing that the money was not in plain view when in the glove compartment, *id.* at 23a. For those reasons, the majority held that the circumstances were "insufficient to establish probable cause for an arrest of a front seat passenger, who is not the owner or person in control of the vehicle, for possession of the cocaine." *Ibid.*[1]

b. The dissent believed that the facts apparent to Officer Snyder "establishe[d] probable cause for the arrest of each of the three individuals, including [respondent]." Pet. App. 38a. In the dissent's view, a "police officer who discovers (at 3 a.m.) three passengers in a vehicle which contained several baggies of cocaine in the rear armrest and a large wad of money (arguably, 'drug money') in the front glove compartment could reasonably believe that those persons were exercising joint and constructive possession of the contraband in the vehicle, were engaging in drug trafficking, or conspiring to engage in drug trafficking, thus establishing probable cause for the arrest of each individual." *Id.* at 41a. The dissent further observed that, although there was probable cause for an arrest, "[w]hether the State's Attorney can produce sufficient evidence to demonstrate, beyond a reasonable doubt, actual or constructive dominion or control over the narcotics and knowledge therein to warrant a conviction is another question

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[1] The majority further concluded that respondent's confession at the police station was the fruit of his unlawful arrest. Pet. App. 24a-34a. That issue is not before this Court.

—one that is properly left to the prosecutor, initially, and the trier of fact, subsequently." *Id.* at 41a-42a.

SUMMARY OF ARGUMENT

An officer faced with the question whether there is probable cause for an arrest must make a practical, common-sense judgment whether there is a fair probability that the suspect has committed a crime. Practical and common-sense considerations compel the conclusion that there was probable cause to arrest respondent in this case. First, when a group of persons arranges to meet and travel together by car, it is reasonable to assume that the group is engaged in a common enterprise. That generalization applies equally when the enterprise involves crime. In addition, individuals involved in drug trafficking are unlikely to carry out their crimes in the immediate company of innocent bystanders, especially within the close confines of an automobile.

This Court's decisions support the inference that the discovery of contraband in an automobile casts suspicion on all of the vehicle's passengers in the crime. In *Wyoming* v. *Houghton*, 526 U.S. 295 (1999), the Court held that an officer who has probable cause to search an automobile may search containers owned by a passenger. The Court based that conclusion on the recognition that passengers will often be engaged in a joint endeavor with the driver. And in *County Court of Ulster County* v. *Allen*, 442 U.S. 140 (1979), the Court held that the presence of illegal handguns in the passenger compartment of a car justified an inference that all of the passengers were culpably involved with the firearms.

In light of those holdings, Officer Snyder had probable cause to arrest respondent in this case. The discovery of a commercial quantity of cocaine and a roll of cash in the passenger compartment suggested that the passengers were jointly involved in drug trafficking. Although respondent was seated in the front seat and the drugs were found in the rear seat, both the cash and the drugs were within his arm's reach. Even if another passenger had concealed the drugs in the rear seat, it was reasonable to infer that the passenger acted in furtherance of the occupants' common interest in avoiding apprehension. Finally, no facts apparent to Officer Snyder at the scene negated the inference that the passengers were jointly associated with the cocaine. None of the passengers, for instance, acknowledged exclusive ownership of the contraband, and none expressed surprise upon discovery of the drugs.

Neither *Ybarra* v. *Illinois*, 444 U.S. 85 (1979), nor *United States* v. *Di Re*, 332 U.S. 581 (1948), requires the conclusion that probable cause was lacking in this case. Unlike *Ybarra*, which involved a person who happened to patronize a particular tavern at the time that the tavern was searched for evidence of drug trafficking, respondent's presence in a car carrying a commercial quantity of cocaine was the result of a consensual arrangement among the passengers to meet and travel together at that time. And while *Di Re* invalidated the arrest of an automobile passenger who was in a car when counterfeit ration coupons were found on the person of another occupant, the continuing vitality of *Di Re* is uncertain in light of later decisions clarifying that a car's passengers normally may be assumed to be engaged in a joint enterprise with each other. In any event, *Di Re* involved unique circumstances in which, unlike here, there was specific reason to doubt the passenger's involvement.

The Maryland Court of Appeals gave inadequate weight to the interest in effective law enforcement when it held that there was no probable cause in this case. The probable cause standard embodies a balance of the societal interests in effectively enforcing the criminal laws and in protecting innocent citizens from unreasonable arrests. When a commercial quantity of drugs is found in a car, it is clear that a crime has been committed, and that some or all of the passengers are the guilty parties. Concerns about unreasonable arrests are limited in that situation, and the interest in ensuring the arrest and prosecution of the actual offenders is significant.

The Maryland Court of Appeals, however, required Officer Snyder to weigh the evidence supporting each of the specific elements of the offense of drug possession before deciding to arrest respondent. Officers at the scene are not expected to sort through the specific elements of uncharged offenses. Instead, they are to make a non-technical and practical determination whether the suspect is involved in criminal activity. There was ample cause in this case for Officer Snyder to conclude that respondent and the other two passengers were engaged in crime.

ARGUMENT

PROBABLE CAUSE EXISTS TO ARREST THE OCCUPANTS OF A CAR WHEN A QUANTITY OF DRUGS SUITABLE FOR DISTRIBUTION AND A ROLL OF CASH ARE FOUND IN THE PASSENGER COMPARTMENT AND NONE OF THE PASSENGERS ACKNOWLEDGES EXCLUSIVE OWNERSHIP OF THE CONTRABAND

The warrantless arrest of an individual in a public place is consistent with the Fourth Amendment if supported by probable cause. *United States* v. *Watson*, 423 U.S. 411 (1976). Under the "practical, common-sense judgment called for in making a probable-cause determination," *Illinois* v. *Gates*, 462 U.S. 213, 244 (1983), the discovery of a commercial quantity of cocaine and a bundle of cash in the passenger compartment of an automobile affords probable cause for arresting each of the occupants. There exists a "fair probability" or "substantial chance" of each passenger's association with the drugs in those circumstances, which suffices to establish probable cause for an arrest under this Court's decisions. *Id.* at 238, 243-244 n.13, 246.

A. An Officer Can Reasonably Infer Upon Finding A Commercial Quantity Of Drugs And A Roll Of Cash In A Car That Each Of The Passengers Is Involved In The Crime

"Perhaps the central teaching of [this Court's] decisions bearing on the probable-cause standard is that it is a practical, nontechnical conception" that deals in "common-sense conclusions about human behavior." *Gates*, 462 U.S. at 231 (internal quotation marks and citations omitted). Common sense dictates that, when drugs packaged for distribution and a roll of cash are found in an automobile, the partners in travel may well be partners in crime. And the practical implications of possessing a commercial quantity of drugs in the passenger compartment of a car support an inference that, absent affirmative indication to the contrary, the passengers are jointly involved in the illegality.

1. *Passengers traveling together in an automobile are frequently engaged in a common enterprise, including when the circumstances involve crime*

When individuals arrange to meet and travel together in a private car, it is fair to assume that their travel is in furtherance of a common objective or design, whether of a lawful or unlawful nature. Accordingly, an officer who discovers evidence of illegal activity in a car usually can reasonably infer that all of the vehicle's occupants are culpable.

That common-sense proposition runs through this Court's decisions. In *Maryland* v. *Wilson*, 519 U.S. 408 (1997), for instance, the Court held that a police officer's settled authority to order the driver out of the car when conducting a traffic stop extends as well to the remaining passengers. The officer's authority, the Court explained, is designed to reduce "the possibility of a violent encounter" stemming from efforts to prevent the officer from uncovering "evidence of a more serious crime." *Id.* at 414. "[T]he motivation of a passenger to employ violence to prevent apprehension of [that] crime is every bit as great as that of the driver," *ibid.*, the Court held, reflecting the natural assumption that the car's occupants would be jointly involved with the driver in committing the crime.

The Court's decision in *Wyoming* v. *Houghton*, 526 U.S. 295 (1999), is to the same effect. *Houghton* holds that the presence of probable cause to search an automobile for contraband extends not only to containers in the car owned by the driver, but also to containers belonging to a passenger. In rejecting the suggestion that the Fourth Amendment draws a distinction between the driver's belongings and those of passengers, the Court reasoned that "a car passenger * * * will often

be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing." *Id.* at 304-305. A passenger's "presence in the car with the driver," the Court further observed, "provide[s] * * * reason to believe that the two were in league." *Id.* at 306.

The inference that the passengers are jointly associated with contraband found in the passenger compartment played a key role in *County Court of Ulster County* v. *Allen*, 442 U.S. 140 (1979). That decision upheld the constitutionality of a statutory presumption in New York law that allowed a jury to conclude from the presence of a firearm in a car that all of the vehicle's occupants possessed the firearm.[2] The case arose from the discovery during a traffic stop of two handguns in the purse of a front-seat passenger. The Court thought it "entirely reasonable" for the jury to have assumed that the handguns were not in the sole possession of the passenger, noting that she was 16 years old, that the handguns were too large to be fully concealed in her purse, that the purse was open, that one of the guns was in plain view and within "easy access" of the driver and the two rear seat passengers, and that the other passengers may have attempted to conceal the guns in her purse in reaction to the traffic stop. *Id.* at 163-164. The Court thus viewed the case as "tantamount to one in which the guns were lying on the floor or the seat of the car in the plain view of the three other occupants." *Id.* at 164.

In such circumstances, the Court held, "it is surely rational to infer that each of the [passengers] was fully

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[2] The presumption did not apply if the firearm was found on the person of one of the passengers. 442 U.S. at 142-143 n.1.

aware of the presence of the guns and had both the ability and the intent to exercise dominion and control over the weapons." 442 U.S. at 164-165. The Court went on to rule that the evidence concerning the presence and location of the firearms in the car established "more likely than not" that all of the occupants were in possession of the handguns. *Id.* at 165.[3] If the presence of the handguns in the car in the circumstances of *Allen* demonstrates "more likely than not" that all of the passengers possessed the firearms, the discovery of a commercial amount of drugs in a car necessarily establishes the existence of probable cause to arrest the occupants.[4]

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[3] In fact, the Court appeared to assume the validity of a parallel New York provision addressing illegal drugs under which all passengers were presumed "culpably involved" when a commercial quantity of drugs was found in a car. 442 U.S. at 165 n.27.

[4] While the Court has eschewed defining probable cause by reference to a "general, numerically precise degree of certainty," *Gates*, 462 U.S. at 235, the Court has indicated that probable cause entails a lesser showing than preponderance of the evidence. See *Illinois* v. *Wardlow*, 528 U.S. 119, 123 (2000) (explaining that the "reasonable suspicion" standard for *Terry* stops "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence"); *Gates*, 462 U.S. at 235 (observing that "[f]inely-tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place" in probable cause analysis, and that no "prima facie showing" is required to establish probable cause); *Texas* v. *Brown*, 460 U.S. 730, 742 (1983) (plurality opinion) (explaining that probable cause "does not demand any showing that [the officer's belief] be correct or more likely true than false"); *Gerstein* v. *Pugh*, 420 U.S. 103, 121 (1975) (noting that probable cause "does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands"). See generally Model Code of Pre-Arraignment Procedure § 120.1 cmt., at 294-296 (1975) (rejecting as too strict a more-probable-than-not standard for warrantless arrests). The term "probable" in the probable cause standard does not suggest a preponderance test: that word "in an earlier time meant that which was capable of being proved or worthy of belief, and was not linked to more recent notions of probabilities measured mathematically." *Id.* at 292-293.

2. Passengers in an automobile as a practical matter are likely to be aware of the presence of a commercial quantity of drugs in the vehicle

The discovery of narcotics and a roll of cash in a car affords reasonable grounds for suspecting the involvement of all of the passengers not only because they are fairly assumed to be "engaged in a common enterprise," *Houghton*, 526 U.S. at 304, but also because, for various practical reasons, the circumstances are particularly suggestive of joint criminality. The propriety of inferring that an individual in the company of persons engaged in crime is a confederate in their unlawful conduct turns on "whether the known criminal activity was contemporaneous with the association and whether the circumstances suggest that the criminal activity could have been carried on without the knowledge of all persons present." *United States* v. *Martinez-Molina*, 64 F.3d 719, 727 (1st Cir. 1995); accord *United States* v. *Hillison*, 733 F.2d 692, 697 (9th Cir. 1988). See generally 2 Wayne R. LaFave, *Search & Seizure* § 3.6(c), at 309-310 (3d ed. 1996). The occupants of a car in which a merchantable quantity of narcotics is discovered were present during the illegality, and they are likely to have known about, and thus to be associated with, the crime.

a. As a general rule, "criminals rarely welcome innocent persons as witnesses to serious crimes and rarely seek to perpetrate felonies before larger-than-necessary audiences." *United States* v. *Ortiz*, 966 F.2d 707,

712 (1st Cir. 1992), cert. denied, 506 U.S. 1063 (1993). Cf. *United States* v. *Gainey*, 380 U.S. 63, 67-68 (1965) ("folklore teaches" that "strangers to the * * * business" of manufacturing illegal liquor "rarely penetrate the curtain of secrecy"). Those involved in the drug trade thus ordinarily would not carry out their crimes in the company of unknowing third parties. See *United States* v. *Burrell*, 963 F.2d 976, 988 (7th Cir.) (noting unlikelihood that "drug traffickers * * * discuss or deliver large quantities of drugs in the presence of innocent bystanders"), cert. denied, 506 U.S. 928 (1992). That is especially the case within the close quarters of the passenger compartment of an automobile, in which any display or handling of an amount of drugs suitable for distribution would likely come to the attention of the other passengers.[5]

In addition, unlike the case with other fruits or evidence of crime, the presence of drugs necessarily betrays criminal activity. A fellow passenger exposed to stolen merchandise or counterfeit currency may have no reason to suspect any illegality. The discovery of such evidence in a car therefore does not necessarily

[5] In *Allen*, for instance, this Court recited with apparent approval New York's justification for presuming the culpability of all of the passengers when a commercial quantity of drugs is found in a car: "We do not believe that persons transporting dealership quantities of contraband are likely to go driving about with innocent friends or that they are likely to pick up strangers." 442 U.S. at 165-166 n.27 (quoting *Interim Report of Temporary State Comm'n to Evaluate Drug Laws*, N.Y. Leg. Doc. No. 10, at 69 (1972)); see *United States* v. *Buchanan*, 70 F.3d 818, 832 (5th Cir.) (noting testimony that an individual transporting a substantial quantity of narcotics "would not allow a complete outsider to ride in the car"), cert. denied, 517 U.S. 1114 (1996).

implicate all of the passengers. See, *e.g.*, *People* v. *Foster*, 788 P.2d 825, 829 (Colo. 1990) (finding no probable cause to arrest a passenger in a pickup truck carrying a motorcycle that had been stolen months beforehand). By contrast, the presence of drugs—without more—immediately reveals criminal activity. As a result, persons carrying narcotics for distribution are unlikely to travel in a car with individuals who are unaware of the crime; and conversely, individuals who travel in a car containing a commercial quantity of drugs are likely to know about the contraband. Even if the drugs are hidden from plain view by the time they are discovered by police officers, the fact that a party attempted to conceal the drugs within the passenger compartment indicates that the contraband had been manipulated in the presence of the other occupants.[6]

For those reasons, the discovery of an amount of narcotics suitable for distribution in the passenger compartment supports an inference that all of the car's occupants were aware of, and hence involved with, the drugs. See *Allen*, 442 U.S. at 164-165 (presuming that passengers were "fully aware" of guns contained in purse in front seat "and had both the ability and the intent to exercise dominion and control over the weapons"); *United States* v. *Carranza*, 289 F.3d 634, 641 (9th Cir.) ("a passenger's presence in a vehicle carrying a commercial quantity of drugs across the border is

[6] If the narcotics are found concealed on the person of an occupant or in a locked and stowed compartment only accessible to the driver, there may be less reason to infer that all passengers were aware of the existence of the contraband. But see *Houghton*, 526 U.S. at 298, 300 (assuming that discovery of a syringe used to take drugs on the driver's person conferred probable cause to search the entire car, including a purse belonging to a passenger).

enough to find probable cause"), cert. denied, 123 S. Ct. 572 (2002); *United States* v. *Garcia*, 848 F.2d 58, 60 (4th Cir.) (permissible to infer awareness of drugs possessed by companion when amount is fit for distribution), cert. denied, 488 U.S. 957 (1988). Cf. *Ker* v. *California*, 374 U.S. 23, 36-37 (1963) (plurality opinion) (probable cause to arrest individual who "had been using his apartment as a base of operations for his narcotics activities" also establishes probable cause to arrest his wife, who was present in the apartment, on ground that "she was in joint possession with her husband").

b. The facts of this case are illustrative. When Officer Snyder found five baggies of cocaine and a roll of money in the passenger compartment, he could reasonably conclude that the occupants were engaged in the distribution of cocaine. The bundle of cash suggested that some drugs had already been sold, and the cocaine packaged for distribution indicated that additional sales were yet to be completed. While "[m]oney, without more," may be "innocuous," Pet. App. 22a, the presence of cocaine packaged for sale together with the cash is indicative of drug trafficking.[7]

Even if those circumstances would not establish adequate cause for concluding that the passengers were then engaged in drug sales, Officer Snyder still could reasonably conclude that respondent and the other occupants were aware of (and associated with) the cocaine in the vehicle. First, although the Maryland Court of Appeals emphasized that respondent sat in the

[7] Also, the lateness of the hour at the time of the traffic stop (3:16 a.m.) could contribute to an inference that the passengers were engaged in illegal drug trafficking. See 4 LaFave, *supra*, § 9.4(d), at 162-164.

front seat rather than the rear seat where the cocaine was found, Pet. App. 21a-23a, the drugs were within his (and the other occupants') reach, see *id.* at 79a. Indeed, the rule of *New York* v. *Belton*, 453 U.S. 454 (1981), permitting the search of the passenger compartment incident to the arrest of an occupant, rests on the assumption that the entire passenger compartment is within the immediate reach of any passenger. See *id.* at 460.

At any rate, even if another passenger in fact concealed the cocaine behind the rear seat armrest, the inference would remain that he did so with the awareness of the other occupants and in furtherance of their common interest in avoiding apprehension. See *Houghton*, 526 U.S. at 304-305; *Wilson*, 519 U.S. at 413-414. The discovery of the money and drugs in separate locations in the car might have bolstered that inference, indicating to Officer Snyder that the various passengers were working together. And the discovery of the drugs behind the armrest rather than in a more secreted location suggested that the cocaine had been in plain view of the passengers but was hastily lodged between the armrest and the seat during the traffic stop. Even if the cocaine might have been placed there previously, the apparent lack of concern that the other passengers would readily discover the contraband points toward their association with the drugs. See *United States* v. *Ross*, 456 U.S. 798, 820 (1982) ("by their very nature [contraband] goods must be withheld from public view").

Consequently, the circumstances apparent to Officer Snyder at the scene, when considered through the lens of common-sense assumptions about the presence of narcotics in the passenger compartment of a car, afforded him ample cause for suspecting respondent and the other passengers of culpability in connection with

the cocaine. The contrary conclusion of the Maryland Court of Appeals cannot be squared with the practical and non-technical inquiry demanded by the probable cause standard.

3. *This Court's decisions in* Ybarra *and* Di Re *do not suggest that probable cause is lacking in the circumstances of this case*

Respondent relies principally (Br. in Opp. 4-8) on this Court's opinions in *Ybarra* v. *Illinois*, 444 U.S. 85 (1979), and *United States* v. *Di Re*, 332 U.S. 581 (1948). Neither of those decisions is at odds with a finding of probable cause in the circumstances of this case.

a. In *Ybarra*, the Court held that officers executing a warrant to search a particular tavern and its bartender for evidence of heroin trafficking did not have probable cause to search one of the tavern's patrons. 444 U.S. at 90-92. The Court explained that, although "the police possessed a warrant based on probable cause to search the tavern in which Ybarra happened to be at the time the warrant was executed," a "person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." *Id.* at 91. The search of an individual "must be supported by probable cause particularized with respect to that person," the Court reasoned, and that condition is not met when "coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be." *Ibid.*

The tavern in *Ybarra* is unlike the bar in this case. Although Ybarra "happened to be" at the tavern during execution of the search warrant, there was no reason to suppose that his physical proximity to the suspected crime was anything more than "coincidental[]." 444

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U.S. at 91. There was no basis for inferring that he had taken part in, or even was aware of, the sale of heroin at the tavern. The passengers in a private car, by contrast, presumably know one another and have arranged to meet and travel together at a particular time and by a particular route. This Court in *Houghton* distinguished *Ybarra* on exactly that basis, observing that car passengers, "unlike the unwitting tavern patron in *Ybarra*," are often "engaged in a common enterprise with the driver." 526 U.S. at 304. See *United States* v. *Hernandez*, 314 F.3d 430, 435 (2002) ("A car, unlike a tavern, is not open to the public. The passenger in a car typically has a relationship with the driver * * *."), amended on other grounds, 322 F.3d 592 (9th Cir. 2003).

For the same reason, the Maryland Court of Appeals was wrong to assume (Pet. App. 21a-22a n.12) that a finding of probable cause in this case would compel the conclusion that the discovery of contraband in a bus or theater would justify the arrest of all who are present. The random association between strangers who happen contemporaneously to ride in the same public bus or to patronize the same commercial establishment is akin to the situation in *Ybarra*. That situation differs in kind from the circumstances of this case.[8]

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[8] *Sibron* v. *New York*, 392 U.S. 40 (1968), which the Court cited in *Ybarra* (444 U.S. at 91), is not pertinent to this case. In *Sibron*, the Court ruled that there was no probable cause to arrest an individual solely on the basis that he had conversations with several drug addicts in the course of an eight-hour period. 392 U.S. at 62-63. The content of the conversations was not known, and no materials had been passed between the parties. While it is not reasonable to infer that persons who merely "talk to narcotic addicts are engaged in the criminal traffic in narcotics," *id.* at 62, in

b. This Court's decision in *Di Re*, although overturning the arrest of an automobile passenger, does not support the conclusion that probable cause was lacking in this case. *Di Re* arose from a government informer's communication to an investigator of his plans to purchase counterfeit gasoline ration coupons from an individual named Buttitta at a certain location. The investigator followed Buttitta's car to the appointed location, and, on approaching the car, found the informer in the rear seat holding two gasoline ration coupons later determined to be counterfeit. The informer told the investigator that he had obtained the coupons from Buttitta, who was in the driver's seat. A third individual, Di Re, was in the front passenger seat. The investigator arrested all three, and a subsequent search of Di Re at the police station uncovered counterfeit coupons on his person. 332 U.S. at 583. This Court set aside Di Re's arrest, holding that the investigator lacked probable cause to suspect Di Re's involvement in the sale of the counterfeit coupons to the informer. *Id.* at 593-594.

That holding does not assist respondent in this case. To begin with, *Di Re* was decided long before this Court's opinions in *Houghton*, *Wilson*, and *Allen*. As explained (pp. 10-12, *supra*), those decisions have now established that the discovery of contraband in the passenger compartment of a car ordinarily justifies an inference that the passengers are jointly culpable. It is not clear that the Court would reach the same result in *Di Re* after those subsequent decisions.

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this case, there is no question that a crime was committed and respondent was in the car with a commercial amount of cocaine.

In any event, the reasons identified by the Court for finding a lack of probable cause in *Di Re* have no application in the context of this case. The Court first observed that, at the time of Di Re's arrest, the investigator had no "information indicating that Di Re was in the car when [the informer] obtained ration coupons from Buttitta" or that Di Re "heard or took part in any conversation on the subject." 332 U.S. at 593. The Court next explained that the crime of selling counterfeit coupons "does not necessarily involve any act visibly criminal." *Ibid.* That is because, even if Di Re had witnessed the passing of the papers to the informer, "it would not follow that he knew they were ration coupons," or, if he recognized them as such, that he "would know them to be counterfeit." *Ibid.* Finally, the Court ruled that any inference of Di Re's involvement based on his possibly witnessing the exchange was erased when the informer, who had no evident reason to avoid incriminating Di Re, "pointed out Buttitta, and Buttitta only, as a guilty party." *Id.* at 594.[9]

None of those considerations applies in the circumstances of this case. First, whereas there was no indication that Di Re was present in the car at the time of the illegal transaction, 332 U.S. at 593, the passengers in an automobile carrying narcotics were present in the car contemporaneously with the unlawful possession. Second, whereas Di Re, even if a witness to the transfer of the coupons, might well not have perceived any

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[9] The government had not called the informer as a witness in Di Re's trial or shown that the informer was unavailable, leading the Court to "assume that [the informer's] testimony would not have been helpful in bringing guilty knowledge home to Di Re." 332 U.S. at 593.

illegality in the passing of seemingly innocuous papers, the possession in a car of a commercial quantity of cocaine "necessarily involve[s] an[] act visibly criminal" to passengers who observe it, *ibid.* Finally, the circumstances in *Di Re* presented an affirmative reason for concluding that Di Re, despite his presence in the car, was not involved in the illegal exchange: the informer, who was a party to the offense and had no apparent motive to color his description of it, fingered Buttitta alone and made no mention of Di Re. *Id.* at 594.

There may be a comparable reason in certain situations to suppose that a particular individual was unaware of the presence of narcotics in the passenger compartment of a car—such as if the passenger were a child or a hitchhiker, see *Allen*, 442 U.S. at 156 n.15, 163, or if the location of the contraband and other contextual considerations made clear that it belonged exclusively to a specific person, see note 6, *supra*. In this case, however, there was no such basis for disregarding the inference that all three passengers were aware of the cocaine. None of them, for instance, acknowledged exclusive ownership of the drugs when questioned by Officer Snyder during the traffic stop. Nor did any of them express surprise at the discovery of the drugs. And no fact apparent to Officer Snyder at the scene suggested that only one passenger could have been aware of (and involved with) the drugs. Consequently, Officer Snyder, notwithstanding *Di Re*, had probable cause to arrest respondent and the other occupants.[10]

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[10] *Johnson* v. *United States*, 333 U.S. 10 (1948), does not suggest otherwise. In *Johnson*, the Court assumed that officers lacked probable cause to effect the warrantless arrest of an individual when she answered the door to a hotel room in which the odor of opium had been detected. *Id.* at 15-17. The officers had no knowledge at that time whether she was alone in the room or with numerous other persons; and they evidently did not know whether she was present in the room while opium was being smoked there, or whether, if present, she was one of the persons smoking it. See *id.* at 16. Here, respondent was known to be one of three passengers in an automobile at a time when a commercial amount of cocaine was present in the passenger compartment. Moreover, *Johnson* addressed whether there was probable cause for the warrantless arrest of an individual following a nonconsensual entry into her residence; and it is now settled that, regardless of probable cause, the police ordinarily must obtain a warrant before making a nonconsensual entry into a residence to effect an arrest. *Payton* v. *New York*, 445 U.S. 573 (1980). Cf. *Chambers* v. *Maroney*, 399 U.S. 42, 52 (1970) ("for the purposes of the Fourth Amendment there is a constitutional difference between houses and cars").

B. The Approach Of The Maryland Court Of Appeals Gives Inadequate Weight To Legitimate Law Enforcement Interests

The "Fourth Amendment accepts [the] risk" that "persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent." *Illinois* v. *Wardlow*, 528 U.S. 119, 126 (2000). That is a necessary cost of ensuring the effective detection and prosecution of crime. As this Court has explained, "innocent behavior frequently will provide the basis for a showing of probable cause; to require otherwise would be to *sub silentio* impose a drastically more rigorous definition of probable cause than the security of our citizens[] demands." *Gates*, 462 U.S. at 244 n.13.

The probable cause standard balances society's interest in affording law enforcement officers "fair leeway

for enforcing the law in the community's protection" against the competing interest in protecting "citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime." *Brinegar* v. *United States*, 338 U.S. 160, 176 (1949). The Maryland Court of Appeals struck that balance in a manner that "unduly hamper[s] law enforcement." *Ibid.*

1. a. An officer faced with the discovery of a commercial amount of cocaine in the passenger compartment of a car knows that a crime has been committed and knows to a near certainty that some or all of the passengers are the guilty parties. The law enforcement interest in permitting an arrest is especially strong in that situation, and the competing concern with arrests based on "whim or caprice" (*Brinegar*, 338 U.S. at 176) is limited.

When there is no doubt that a crime has been committed, the interest in effective enforcement of the law is pronounced. See Model Code of Pre-Arraignment Procedure § 120.1 cmt., at 296 (1975) (Model Code) ("[I]t is necessary to distinguish between cases where there is substantial doubt about whether a crime has been committed at all, and cases where the doubt relates to the identity of the offender.").[11] In the context of

[11] See also 2 LaFave, *supra*, § 3.2(e), at 70 (explaining that there "may be * * * a basis for being more demanding [in applying the probable cause standard] with respect to the existence of criminal activity than with respect to the identity of the perpetrator of a known crime"). The application of the privilege of arrest at common law reflected such a distinction. Whereas the privilege was unavailable to a private individual who made an arrest based on an erroneous suspicion that a felony had been committed, it was available to an individual who was correct in believing that a felony had been committed but who arrested the wrong person. See 1 Restatement (Second) Torts § 119 cmt. h, at 196 (1965).

narcotics trafficking, moreover, the crime is likely part of a continuing pattern rather than an isolated incident, magnifying the interest in facilitating arrest and prosecution to prevent future offenses.

As for the identity of the parties responsible for the drugs in the car, because the class of suspects consists only of the current passengers and because of the virtual certainty that some or all of them bear responsibility, the concern with protecting against unreasonable arrests of innocent citizens is substantially mitigated. See 2 LaFave, *supra*, § 3.2(e), at 68 (observing that the "degree of certainty that the actual offender is within the group" bears on probable cause); *id.* at 71 (explaining that "existence of known criminal activity," as opposed to uncertainty about whether a crime has occurred, "serves to provide an anchor or touchstone, in a time-space sense, which limits the police arrest authority"). A particular passenger may ultimately prove innocent of association with the drugs. But the balance of interests favors allowing an arrest of the vehicle's occupants. See *Houghton*, 526 U.S. at 305 ("[T]he balancing of interests must be conducted with an eye to the generality of cases.").

b. When, as in this case, it is certain that a crime has been committed and the group of legitimate suspects is both small in number and likely to include the actual offender, the probable cause standard would permit the arrest of all of them even absent any inference that more than one was involved—*i.e.*, even if there is a strong likelihood of the arrest of persons who in fact are innocent. The interest in ensuring the ability to appre-

hend and prosecute the actual offender justifies multiple arrests in that situation. See Model Code 295 (explaining that there is "good authority" for arresting "two or more persons, not believed to be accomplices," for "the same offense"). The Restatement of Torts illustrates the point through an example:

> A sees B and C bending over a dead man D. B and C each accuse the other of murdering D. A is not sure that either B or C did the killing, but he has a reasonable suspicion that either B or C killed D. A is privileged to arrest either or both.

1 Restatement (Torts) Second § 119 ill. 2, at 198 (1965); see 4 LaFave, *supra*, § 9.4(b), at 150-151 (describing "the classic case in which a man is shot in the back in a locked room and the two persons present at the time accuse each other," and concluding that "it would seem that both suspects might be arrested").[12]

In this case, consequently, even if the circumstances had led Officer Snyder to believe that one (and only one) of the three passengers could have been associated with the cocaine, he had probable cause to arrest all three and to identify the guilty party through further investigation: each of the three was within reach of the drugs and the roll of cash, and no affirmative reason existed to dismiss any of them as a suspect. Cf. *Iowa* v. *Horton*, 625 N.W.2d 362, 367 (Iowa) (rejecting notion that "probable cause is finite and, if it is expended on

[12] The rule described in the Restatement is a longstanding one in the common law. See 1 Restatement (First) Torts § 119, ill. 2, at 254 (1934) (invoking the same example). This Court frequently relies on common law principles in determining the contours of the Fourth Amendment. See, *e.g.*, *Houghton*, 526 U.S. at 299-302; *Wilson* v. *Arkansas*, 514 U.S. 927, 931 (1995).

one suspect, there cannot be enough left for another suspect") (internal quotation marks and citation omitted), cert. denied, 534 U.S. 928 (2001).

2. The approach of the Maryland Court of Appeals requires too much of officers at the scene and leaves them insufficient discretion to respond effectively to a known crime.

a. To begin with, the court assumed that Officer Snyder was required before making an arrest to weigh the evidence supporting each element of the drug possession charges ultimately brought against respondent. See Pet. App. 8a, 21a. In the court's view, the evidence apparent to Officer Snyder of the elements of "knowledge" and "dominion or control" did not suffice to justify an arrest. *Id.* at 21a. That approach is inconsistent with the admonition that the probable cause standard is a "practical, nontechnical conception," *Brinegar*, 338 U.S. at 176, that deals in the considerations of "reasonable and prudent men, not legal technicians," *id.* at 175.

Requiring police officers at the scene to sort through the elements of uncharged offenses unduly impairs their ability to take resolute action in the face of concrete evidence of crime. An officer deciding whether to make a warrantless arrest frequently confronts an uncertain and evolving situation. See Model Code 294. The probable cause standard is a correspondingly "fluid concept." *Gates*, 462 U.S. at 232. Accordingly, an officer need not identify a specific offense that he believes has been committed before deciding to arrest, see Model Code 296-297; 2 LaFave, *supra*, § 3.2(e), at 72, let alone wrestle with the various elements of an offense. See *Adams* v. *Williams*, 407 U.S. 143, 149 (1972) ("Probable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction.").

The responsibility for analyzing specific offense elements and weighing the evidence of particular crimes lies principally with the prosecutor in arriving at a charging decision and with the finder of fact in reaching a determination on guilt. The purpose of an officer's antecedent decision to arrest "is to take the person into custody so that the determination can be made whether or not to charge the arrested person with crime." Model Code 294. In this case, respondent's proximity to the cocaine and the roll of money, coupled with common-sense inferences about the situation, afforded Officer Snyder ample cause for suspecting respondent's involvement in some capacity with the drugs.[13]

b. The approach of the Maryland Court of Appeals disables officers from responding effectively to the discovery of narcotics in an automobile. Both the court (Pet. App. 2a, 21a, 23a) and respondent (Br. in Opp. 7-8) appear to assume that officers could arrest the driver or owner of the car as opposed to a "mere passenger." In many situations, however, the driver or owner may not be the most obvious suspect. The emphasis on those individuals stems from the belief that, because they have a measure of control over the vehicle, they may be more likely responsible for contraband secreted within it. If the driver alone were associated with the contraband, however—as is presumed by an approach that would allow only his arrest but not that of a "mere passenger"—one would expect the driver to conceal the

[13] In any event, even with respect to the particular offense elements of knowledge and control, the location of the drugs and roll of money within respondent's reach presented strong circumstantial evidence that he was aware of the presence of the cocaine and could exercise constructive control over it. See *Allen*, 442 U.S. at 164.

contraband in a location entirely inaccessible to the other passengers (such as in a locked container in the trunk), rather than to leave it in the passenger compartment subject to discovery by the other occupants. For that reason, perhaps the least likely scenario when drugs are found behind the rear seat armrest is that the driver acted alone.

Insofar as respondent or the Maryland Court of Appeals would also allow the arrest of the passenger seated closest to the contraband, that approach, too, would be unsound. If only one person were in the car, probable cause ordinarily would exist for his arrest if drugs were found somewhere in the passenger compartment within his reach. It would make little sense to preclude the arrest of that same person when drugs are found in exactly the same location simply because an additional passenger is seated more closely to the contraband—especially given that the two may well be jointly associated with the drugs. Moreover, an analysis pinned on an individual's relative distance from contraband would encourage the passenger with immediate control over the drugs to deposit them in the vicinity of another passenger in the event of a traffic stop, thereby potentially insulating from arrest the individual most clearly in control of the drugs. Cf. *Houghton*, 526 U.S. at 305 (observing that a passenger could surreptitiously hide contraband in another passenger's belongings).

Finally, insofar as respondent or the Maryland Court of Appeals might mean to suggest that no one may be arrested when officers are unable to determine with confidence that any specific passenger was responsible for the drugs, that conclusion could not be squared with the common-sense inference that probably all—and certainly some—of the passengers are associated with

the contraband. That approach would also give automobile passengers involved in drug trafficking a ready recipe for mutually avoiding arrest. The better approach is to permit an officer to examine the totality of circumstances and to arrest all of the passengers if the situation warrants it. Although an innocent passenger may be arrested in particular cases, the probable cause standard presumes that "room must be allowed for [such] mistakes." *Brinegar*, 338 U.S. at 176. And when that occurs, the arrests frequently, as in this case, will facilitate further investigation that enables the officer to conclude in short order that a particular passenger should be released.

CONCLUSION

The judgment of the Court of Appeals of Maryland should be reversed.

Respectfully submitted.

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